



**North Carolina Department of Health and Human Services  
Division of Mental Health, Developmental Disabilities and Substance Abuse Services**

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Michael F. Easley, Governor

Carmen Hooker Odom, Secretary

Michael Moseley, Director

November 22, 2004

**MEMORANDUM**

**To:** Legislative Oversight Committee Members  
Commission for MH/DD/SAS  
Consumer/Family Advisory Committee Chairs  
State Consumer Family Advisory Committee  
Advocacy Organizations and Groups  
North Carolina Association of County Commissioners  
County Managers  
County Board Chairs  
North Carolina Council of Community Programs  
State Facility Directors  
Area Program Directors  
Area Program Board Chairs  
DHHS Division Directors  
Provider Organizations  
MH/DD/SAS Professional Organizations and Groups  
MH/DD/SAS Stakeholder Organizations and Groups  
Other MH/DD/SAS Stakeholders

**From:** Mike Moseley

**Re:** **Communication Bulletin #030**  
DRAFT Policy for Consumer Complaints to  
Area/County Program



Attached please find a **draft** policy for Consumer Complaints to an Area/County Program. This draft has been developed with input from various stakeholders, including the Office of the Attorney General and the NC Council of Community Programs. The draft is being published at this time for review and comment by the broader MH/DD/SA stakeholder community. Comments may be submitted through December 31, 2004, by e-mail, fax or written communication directed to:

Stuart Berde, Team Leader  
Customer Services and Community Rights Team  
DMH/DD/SAS  
3009 Mail Service Center  
Raleigh, NC 27699-3009  
Fax # (919) 733-4962  
E-Mail [Stuart.Berde@ncmail.net](mailto:Stuart.Berde@ncmail.net)

**Attachment**

cc:	Secretary Carmen Hooker Odom	Rob Lamme	James Bernstein
	Lanier Cansler	Jim Klingler	Carol Duncan-Clayton
	DMH/DD/SAS Executive Leadership Team	Kaye Holder	Robin Huffman
	DMH/DD/SAS Staff	Wayne Williams	Mike Mayer
	Rich Slipsky	Patrice Roesler	Bob Hedrick



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## ***Policy for Consumer Complaints to an Area/County Program (AP)***

### **I. Potential Rights Violations**<sup>1</sup>

1. A consumer, guardian, staff person or other individual observing the alleged violation may file a complaint against a service provider or Area Program/Local Management Entity staff to the AP. DHHS shall provide APs with a listing of standard elements to be collected for each complaint.
2. Complaints are filed to the APs Customer Services and Consumer Rights office<sup>2</sup> (hereafter CSR).
3. The CSR must notify a complainant within 5 days<sup>3</sup> of receipt of the complaint whether the complaint will be addressed directly by a conflict resolution process, or by conducting an investigation of the allegation(s).<sup>4</sup>
4. In CONFLICT RESOLUTION PROCESSES (Informal Reviews), the AP shall offer the complainant the option of accessing the provider's internal complaint process or conflict resolution services facilitated by the AP.
  - (a) For contract providers, consumers are not *required* to participate in the provider's conflict resolution or complaint process before submitting a complaint to the AP.
  - (b) If the issue is resolved either by the provider's or the AP's conflict resolution process, the AP documents the results.
  - (c) The informal review shall be completed within 10 days after acceptance by the CSR.
  - (d) If the issue is not resolved, the complainant may file a complaint to the AP Human Rights Committee within 10 days from the date of the completion of the conflict resolution process.
  - (e) If the need for an investigation is revealed during conflict resolution, the AP will begin the investigation or refer to the appropriate State or local government agency.
  - (f) The Human Rights Committee's decision shall be dated and mailed to the complainant by the CSR within 15 days from receipt of the complaint
5. In INVESTIGATIONS, the AP must adhere to all procedures and deadlines that apply to the complaint and investigation process for 10A NCAC 27G .0606 (pursuant to SB 163), the relevant portion of which is summarized below:
  - (a) The AP must complete the complaint investigation within 30 days of the date of the receipt of the complaint and submit a report of investigation findings to the complainant, the provider or to the appropriate supervisory

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<sup>1</sup> Including, but not limited to, G.S.122C-Article 3, NCAC T10A 26B (Confidentiality Rules for MH/DD/SA Facilities and Services) and 27C, 27D, 27E, 27F (Client Rights Rules in Community MH/DD/SA Services).

<sup>2</sup> Each AP is developing these functions which include advocacy and investigation.

<sup>3</sup> All days are calendar days. If necessary, deadlines fall on the first business day after a weekend or holiday.

<sup>4</sup> The AP or the complainant may request technical assistance from the DMH/DD/SA Customer Service and Community Rights Team. No formal resolution or decision shall be rendered by DMH/DD/SA in this process.

staff for complaints regarding area program/county program staff, and to the consumer's home AP, if different.

- (b) The report shall be submitted within 10 working days of the date of completion of the investigation.
- (c) If a violation is found, the AP shall require remedial action through a plan of correction submitted by the provider within 10 working days from the date the provider receives the complaint investigation report.
- (d) The AP shall review and respond in writing to the provider's plan of correction with approval or a description of additional required information to the provider within 10 working days of receipt of the plan of correction.<sup>5</sup>
- (e) If a plan of correction is needed, it shall be implemented in a timely manner not exceeding 60 days from the date of the complaint investigation report.
- (f) The AP shall comply with 10A NCAC 27G .0606 (pursuant to SB 163) regarding the referrals of AP investigations.
- (g) The complainant who disagrees with the results of the AP actions may file a complaint to the Human Rights Committee within 10 days from the receipt of the investigation report and corrective action plan. The complaint is limited to the complaint record and allegations that the investigation and/or corrective actions are inadequate or not completed in a timely manner.
- (h) The Human Rights Committee shall notify the complainant within 5 days from receipt of the complaint whether the complaint meets the above criteria.

If the complaint is accepted, the CSR shall send the Human Rights Committee's written decision within 10 days from receipt of the complaint to:

- 1) uphold the investigation findings and corrective action plan
- 2) return the investigation findings and corrective action plan to the CSR for a reinvestigation,
- 3) uphold the investigation findings and corrective action plan with specified changes.

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<sup>5</sup> The AP shall follow-up on issues regarding correction in the investigation report no later than 60 days from the date the plan of correction is approved.

## **II. Complaints Regarding Emergent and Non-Emergent Authorization Decisions for Non-Medicaid Eligible Consumers**

Consumer may file a *written or verbal complaint* regarding emergent and non-emergent authorizations to the AP CSR. DHHS shall provide APs with a listing of standard elements to be collected for each complaint and written notice letters. The CSR staff must assist a complainant who requests assistance in filing the complaint and also provide consumer information materials describing the complaint process and how to contact advocacy groups.

### **1. Clinical Review of Complaints Regarding Denials of Emergency Access**

*The AP shall develop policies and procedures that include the following elements to address complaints resulting from denials of emergency service. All clinical protocols for consumer care and provision of services must be followed.*

1. A physician not involved in the original decision to deny services shall provide a “clinical review” (a second opinion) within 48 hours from the date of the complaint and shall make a recommendation to the AP Medical/Clinical Director to overturn the denial or support the decision.
2. The AP Medical/Clinical Director shall make the final decision and notify the consumer, the service provider and the CSR within 24 hours from the date of the clinical review decision and shall mail the decision and all documentation to the consumer, the service provider and the CSR no later than the next day following the clinical review decision.

### **2. Clinical Review of Complaints Regarding Non-Emergent Authorizations**

*The AP shall develop policies and procedures that include the following elements to address complaints regarding service authorization decisions (denials of requested services, reductions, suspensions or terminations of current services) for individuals without Medicaid eligibility.*

1. Notification Requirements: The AP shall provide the consumer with written notification for any denial of a requested service, reduction, suspension or termination of a current service.
  - For a denial of a requested service, the letter shall be dated and mailed no later than the next day following the AP original decision to deny authorization. The letter shall state that the requested service shall be authorized if the prior denial is overturned by the subsequent AP clinical review.
  - For suspensions, reductions and terminations, the letter must be dated and sent at least 10 days prior to the last date of authorized services. The letter shall state the date on which specific service specified in the letter shall be reduced, suspended or terminated. The letter shall also state that the specific service shall be reinstated

- if the subsequent AP clinical review decision overturns the original decision to suspend, reduce or terminate the service.
- The notification letters shall include information to the consumer regarding the reason for the decision and any available options or considerations while the complaint is under review.
2. **Filing Requirements:** The complaint regarding any denial, suspension, reduction or termination decision must be received verbally or in writing by the CSR within 10 days of the date of the notification letter.
3. **Clinical Reconsideration Review:**

The AP Medical/Clinical Director or designee shall complete a clinical review of the complaint and may uphold or overturn the original decision within 5 days from receipt of the complaint. The AP Medical/Clinical Director or designee shall review the complaint based on the following criteria:

- The decision described in the notification letter is not consistent with established service definitions.
- The decision described in the notification letter is not clinically appropriate to the complainant's situation.

*Decision Requirements:* The AP Medical/Clinical Director or designee notifies the complainant and the CSR of the decision within 2 days from the date of the clinical review. The decision letter to the consumer shall be mailed no later than the next day following the AP review decision. In cases in which the reviewer overturns the original decision, the decision letter shall state the date on which the denied service shall be authorized or the date on which the suspended, reduced or terminated service shall be reinstated.

### **III. Complaints Regarding Administrative Issues and/or Types and Quality of Services**

*The AP shall develop policies and procedures that include the following elements to address complaints of administrative issues and/or provision of services.*

A consumer may file a *written or verbal complaint* regarding administrative issues and/or provision of services to the AP CSR. DHHS shall provide APs with a listing of standard elements to be collected for each complaint. The CSR staff must assist a complainant who requests assistance in filing the complaint and also provide consumer information materials describing the complaint process and how to contact advocacy groups.

*Receipt and Documentation of Complaint:*

The CSCR reviews and documents the complaint. The letter to the consumer acknowledging receipt of the complaint shall be mailed no more than 2 days following the date the complaint was received. The letter shall describe the informal review process to address the specific complaint and provide contact information for questions regarding the complaint.

*Review Levels:*

*Level I:* Informal Review Process: The CSR shall implement an informal process to review the complaint within 10 days from the date the complaint was received by the CSR and ensure that the complainant is given full opportunity to represent his/her concern. A decision regarding the complaint shall be dated and mailed to the complainant by the CSR within 2 days of the date the review was held.

*Level II:* A complaint regarding a Level I decision must be received verbally or in writing by the CSR within 10 days of the date indicated on the Level I written decision letter. The AP Director shall review the complaint. The CSR shall send the AP Director's written decision to the complainant within 10 days from the date the complaint was received by the CSR. The letter shall be mailed no later than the next day following the Level II review decision.